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tion was estopped to rely thereon as a defense to the agency's action for expense incurred in preparing the plans based on an implied promise to pay the agency therefor.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 637.]

Error to Law and Equity Court of City of Richmond.

Action by Staples & Staples, Incorporated, against the Haynes Chemical Corporation. From judgment for plaintiff, defendant brings error. Affirmed.

Williams & Mullen and Guy B. Hazelgrave, all of Richmond, for plaintiff in error.

R. Grayson Dashiell, of Richmond, for defendant in error.

SEYMOUR et al. v. COMMONWEALTH.

June 15, 1922.

[112 S. E. 806.]

1. Judgment (§ 751*)—Acquittal on Evidence of Conspiracy to Rob, though Used at a Former Trial for a Homicide, Not Res Judicata at Trial for a Second Homicide.—In a murder prosecution, evidence of robbery or attempted robbery and a conspiracy to commit robbery was admissible, notwithstanding that, at a previous trial for murder of another upon substantially the same evidence, each issue was involved and submitted and was decided in favor of defendants.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 348.]

2. Judgment (§ 751*)—Same Evidence Admissible on Successive Trials for Distinct, but Related, Offenses.—There is no constitutional or statutory guaranty that evidence offered upon the trial of an accused for an offense of which he was either convicted or acquitted may not thereafter be offered to prove a distinct, but related, offense.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 308.]

3. Criminal Law (§ 1166½ (6)*)—Where a Fair Jury Selected, Rejection of Veniremen Not Error.—In a criminal prosecution, where a fair jury was selected, defendant cannot complain that other fair jurors were not sworn to try his case.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 11.]

4. Criminal Law (§ 1169 (5)*)—Admission of Evidence of Conversation between Conspirators after Homicide Harmless Where Court Limited Its Effect.—In a murder prosecution, where evidence relating to a conversation between some of the alleged conspirators on the morning after the homicide was admitted, but the court instructed that it could not be considered except as against those of the accused who were present, an assignment of error was without merit.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Homicide (§ 1169 (5)*)—Permitting Evidence, under Limitations, of Recent Ship Robberies, Not Error.—In a murder prosecution, where evidence as to recent previous robberies of ships by defendants acting together was admitted, but the court instructed that the jury could only consider this evidence in connection with and as explanatory of the intent and plan of defendants at the time the crime charged was committed, and that they could not consider it as proof that defendants had committed other offenses not charged in the indictment, and defendants' rights further guarded by other instructions, there was no reversible error in the admission of this evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 592.]

6. Criminal Law (§ 636 (3)*)—Motion for Continuance for Sickness of Accused Not Part of Trial Requiring Presence of Accused at Its Determination.—Where in a murder prosecution one of the defendants on April 20 during the trial was taken ill in jail, and the trial suspended from time to time because of his absence until April 22, when he was brought into court and the trial proceeded, in view of Code 1919, § 4894, providing that a person tried for felony shall be personally present, but also that a motion for continuance, whether made before or after arraignment, shall not be deemed part of the trial, the suspensions from time to time were not part of the trial nor denial of defendant's guilt.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 300.]

7. Criminal Law (§ 97 (5)*)—Corporation Court Had Jurisdiction of Homicide within One Mile of City Limits.—Where a homicide was committed on board a ship anchored within 500 or 600 yards of a pier, being within one mile of the city limits, the corporation court, by Code 1919, § 5910, providing that corporation courts have concurrent jurisdiction with circuit courts over offenses, etc., had jurisdiction.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 899.]

Error to Corporation Court of Norfolk.

W. E. Seymour and others were convicted of murder, and they bring error. Affirmed.

J. L. Broudy and Tazewell Taylor, both of Norfolk, for plaintiffs in error.

John R. Saunders, Atty. Gen., for the Commonwealth.

PAYNE, Director General of Railroads *v.* BROWN.

June 15, 1922.

[112 S. E. 833.]

1. Appeal and Error (§ 995*)—Evidence Rejected by Jury Cannot Be Considered on Appeal unless Material as to the Instructions.—Evi-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.